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JEFF HATCH-MILLER
MIKE GLEASON

OPEN MEETING ITEM



ORIGINAL

BRIAN C. MCNEIL
Executive Secretary
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ARIZONA CORPORATION COMMISSION

2003 SEP 16 A 11: 12

DATE: September 16, 2003

DOCKET NOS: T-00000A-00-0194

TO ALL PARTIES:

AZ CORP COMMISSION
DOCUMENT CONTROL

Enclosed please find the recommendation of Assistant Chief Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Opinion and Order on:

QWEST COMMUNICATIONS
(TRANSPORT AND ANALOG PORT RATE ISSUES/
PHASE II AND IIA SUPPLEMENTAL)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

SEPTEMBER 25, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Open Meeting to be held on:

SEPTEMBER 30 and OCTOBER 1, 2003

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931

Arizona Corporation Commission

DOCKETED

SEP 16 2003

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DOCKETED BY	
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 JIM IRVIN
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 MIKE GLEASON

8 IN THE MATTER OF THE GENERIC
9 INVESTIGATION INTO U.S. WEST
10 COMMUNICATIONS, INC.'S nka QWEST
11 CORPORATION, COMPLIANCE WITH CERTAIN
12 WHOLESALE PRICING REQUIREMENTS FOR
13 UNBUNDLED NETWORK ELEMENTS AND
14 RESALE DISCOUNTS.

DOCKET NO. T-00000A-00-0194

DECISION NO. _____

**PHASE II AND IIA SUPPLEMENTAL
OPINION AND ORDER
REGARDING TRANSPORT AND
ANALOG PORT RATE ISSUES**

11 DATE OF HEARING:

May 28, 2003

12 PLACE OF HEARING:

Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE:

Dwight D. Nodes

14 APPEARANCES:

Mr. Gregory J. Kopta, DAVIS, WRIGHT, TREMAINE,
LLP, on behalf of AT&T Communications of the
Mountain States, Inc.;

Mr. John M. Devaney, PERKINS COIE, LLP, on behalf
of Qwest Corporation;

Mr. Mitchell F. Brecher and Ms. Lynda R. Vescio,
GREENBERG TRAURIG, LLP, on behalf of Mountain
Telecommunications, Inc.; and

Ms. Maureen A. Scott, Staff Attorney, Legal Division,
on behalf of the Utilities Division of the Arizona
Corporation Commission.

22 **BY THE COMMISSION:**

23 This Supplemental Opinion and Order comes before Arizona Corporation Commission
24 ("Commission") to establish unbundled network elements ("UNEs") for transport and analog port for
25 Qwest Corporation ("Qwest") in the State of Arizona.

26 * * * * *

27 **I. INTRODUCTION**

28 On June 12, 2002, the Commission issued Decision No. 64922 in this docket establishing

1 permanent geographically deaveraged wholesale rates for Qwest in Arizona ("Decision No. 64922"
2 or "*Phase II Order*"). That Decision also established prices for a number of recurring and non-
3 recurring charges for UNEs, interconnection, collocation, and other ancillary services.

4 Prior to the Phase II hearing, the parties agreed to defer consideration of "switching" issues to
5 "Phase IIA" of this docket. Hearings were held in Phase IIA and, on December 12, 2002, Decision
6 No. 65451 was issued to resolve the issues in that phase of the proceeding ("Decision No. 65451" or
7 "*Phase IIA Order*"). Pursuant to Decision No. 65451, a Compliance Filing was required to be filed
8 within 30 days.

9 On January 10, 2003, Qwest filed a Compliance Filing indicating that the parties had come to
10 agreement on all but one rate element determined in Decision No. 65451. That rate element is the
11 recurring charge for "analog line side port." Due to a discrepancy in the *Phase IIA Order*, Qwest
12 contends that the rate for this element should be \$2.44, while AT&T Communications of the
13 Mountain States, Inc. ("AT&T") and WorldCom, Inc. ("WorldCom") (jointly the "CLECs") advocate
14 a rate of \$1.61. On February 11, 2003, Qwest filed a Motion to Reopen the Record and Modify the
15 Decision in order to resolve the analog port issue.

16 The other issues presented in this proceeding relate to the transport rates that were established
17 in the *Phase II Order*. The transport rate issue was initially raised by Mountain Telecommunications,
18 Inc. ("MTI") through a Motion for Injunction filed on January 17, 2003 in this Cost Docket and in
19 Docket No. T-01051B-02-0871 ("*Show Cause Docket*"). In its Motion for Injunction, MTI requested
20 that the Commission enjoin Qwest from imposing the transport rate charges that were authorized in
21 Decision No. 64922. According to MTI, the transport rates flowing from that Decision were
22 unintended by the Commission and resulted in rates that are more than five times higher than the
23 transport rates previously charged by Qwest, a result MTI claims is inconsistent with the
24 Commission's stated goal of encouraging local competition. MTI alleges that, under Qwest's new
25 transport rates, MTI is being charged for entrance facilities that it does not need or use. MTI
26 subsequently filed a Formal Complaint against Qwest on February 13, 2003 (Docket No. T-01051B-
27 03-0092), raising essentially the same allegations that were made in MTI's Motion for Injunction.

28 On March 25, 2003, a Procedural Conference was conducted to discuss the allegations raised

1 by MTI regarding the new transport rates. At the Procedural Conference, Qwest agreed that it would
2 accept payments from MTI based on the transport rates that were in effect prior to June 12, 2002,
3 until the Commission issues a Decision on these issues (March 25, 2003 Tr. 43-44). On April 8,
4 2003, a Procedural Stipulation was filed by Qwest, Staff, AT&T, MTI, and Time Warner
5 Communications requesting an expedited hearing on the above-described transport and analog port
6 rate issues. The parties also requested that the Commission address in this limited proceeding the
7 issue of whether the transport rates determined in this Decision should be effective as of June 12,
8 2002 (the date of Decision No. 64922), or as of the date of this Decision.

9 By Procedural Order issued April 11, 2003, the Procedural Stipulation was accepted and a
10 hearing date was set for May 28, 2003. The hearing was held on May 28, 2003. Post-hearing briefs
11 were filed on July 1, 2003.

12 **II. DISCUSSION**

13 **A. Transport Rate and Entrance Facility Charges**

14 Pursuant to the Stipulation, the parties presented testimony regarding whether one of two
15 options proposed by Staff should be adopted for purposes of establishing the appropriate transport
16 rate in this proceeding. The parties agreed to address the transport rate issue as follows: "Should
17 Staff's Option 1 (the transport rates prior to this Cost Docket) or Staff's Option 2 (the transport rates
18 adopted in Decision No. 64922 minus the entrance facility charges where no entrance facility is
19 provided) be adopted as the rates for DS1 and DS3 transport effective until the reconsideration of
20 these rates in Phase III of the Cost Docket?"

21 Staff witness William Dunkel testified that, although Staff could accept either of its proposed
22 options, Staff prefers adoption of Option 1 (Ex. S-1, at 3). Mr. Dunkel stated that Option 1 would
23 reinstate the separate entrance facility and transport rates that had previously been approved in
24 Decision No. 60635 (the "*Phase I Cost Docket Order*").

25 Mr. Dunkel explained that the new transport rates flowing from Decision No. 64922 had the
26 unintended result of increasing rates for companies such as MTI by a significant amount. According
27 to Mr. Dunkel, the new transport rates approved in the *Phase II Order* should have increased those
28 rates by no more than seven percent. Staff determined that, prior to Phase II, Qwest charged separate

1 “entrance facility” and “transport” rates. After Decision No. 64922 the two separate rates were
2 replaced with one “transport” rate, based on the assumption in Qwest’s cost studies that there was one
3 entrance facility for each transport rate (Ex. S-1, at 5). However, for companies such as MTI,
4 transport lines were previously provided in such a way that entrance facility charges were not
5 included. The net result is that, under the new rates, MTI and other similarly situated companies
6 would effectively be paying for entrance facilities that they are not using (Id.).

7 MTI witness Michael Hazel supports Staff’s position. He testified that the new transport rates
8 imposed by Qwest resulted in increases of more than 78 percent (approximately \$55,000 per month).
9 MTI supports Staff’s Option 1 proposal because it would allow MTI to return to the rate format
10 previously in place until the issue can be addressed on a permanent basis in Phase III of the Cost
11 Docket. As a result, MTI would pay only for the services that it actually uses (MTI Ex. 1, at 4).

12 Qwest argues that only Option 2 achieves the goal of maintaining a consistent approach in
13 setting UNE rates. Qwest agrees that the Commission should establish separate charges for entrance
14 facilities and direct trunk transport. However, Qwest contends that only Option 2 would permit the
15 division of transport costs produced in the HAI model (which was adopted by the Commission in the
16 *Phase II Order*) into distinct transport and entrance facility charges. Qwest witness Teresa Million
17 proposed the use of the same ratio of entrance facility costs that the Commission established in the
18 *Phase I Cost Docket Order* (Qwest Ex. 1, at 2-3). Qwest contends that, although Option 2 would
19 require recalculation of transport rates, the Commission’s prior adoption of the HAI model
20 necessitates approving that option to ensure consistency and full recovery of Qwest’s costs.

21 We believe that the most reasonable approach on an interim basis is to adopt Staff’s Option 1,
22 with the understanding that this issue would be resolved on a permanent basis in the Phase III
23 proceeding. There is no dispute by any party, including Qwest, that Qwest’s combination of entrance
24 facility and transport charges into a single rate resulted in a wholly unexpected result for companies
25 such as MTI that do not need entrance facilities for transport. Although Qwest’s combined entrance
26 facility and transport rate was authorized by the *Phase II Order*, that authorization was based on the
27 mistaken premise, shared by all parties to this case, that all UNE customers required entrance and
28 transport facilities. Due to this mistaken assumption, the most equitable interim result for companies

1 such as MTI is to return transport charges to their pre-Phase II status. Compared to the relatively
2 straight-forward resumption of those prior rates, Option 2 would require the implementation of
3 complex formulae which are described in Ms. Million's testimony (Qwest Ex. 1, at 3). Ms. Million
4 conceded that Qwest had not been able to "unravel the HAI model to determine how much is
5 entrance facilities versus how much is actually transport facilities" and that she did not know how
6 long it would take Qwest to implement Option 2 (Tr. 75-76). Mr. Dunkel affirmed that the
7 calculations required to split entrance facilities and transport were complex and that, given the
8 interim nature of these transport rates, he suggested that Option 1 was a much simpler means of
9 achieving an equitable result (Tr. 32). As indicated above, the transport and entrance facility charges
10 will be subject to a full review in Phase III following submission of studies and testimony in that
11 proceeding. We therefore conclude that Staff's Option 1 proposal should be adopted as an interim
12 measure pending completion of the Phase III proceeding.

13 **B. Transport Rate Effective Date**

14 The second issue addressed in this proceeding is whether the revised transport rates should be
15 made effective as of June 12, 2002 or from the effective date of this Decision adopting the transport
16 rates.

17 Qwest contends that any transport rate changes resulting from this proceeding may only be
18 effective from the date of this Decision. According to Qwest, any attempt by the Commission to
19 apply the transport rates approved herein to June 12, 2002 would constitute retroactive ratemaking.
20 Qwest cites *Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Railway, Co.*, 284 U.S. 370 (1932),
21 to support its argument. In that case, the United States Supreme Court invalidated an order of the
22 Interstate Commerce Commission that required the railroad carrier to make "reparations" to
23 customers for rates that were subsequently found to be unreasonable. Qwest asserts that the *Phase II*
24 *Order* is analogous to *Arizona Grocery* because the Commission previously authorized the rates that
25 were implemented by Qwest for transport facilities. Qwest also argues that Arizona court cases
26 recognize the prohibition against retroactive ratemaking. See, e.g., *Mountain States Tel. & Tel. Co. v.*
27 *Arizona Corporation Comm'n*, 124 Ariz. 433 (Ariz. Ct. App. 1979); *El Paso & S.W.R. Co. v. Ariz.*
28 *Corporation Comm'n*, 51 F.2d 573 (D. Ariz. 1931). Qwest further contends that A.R.S. §40-252,

1 which allows the Commission to rescind, alter, or modify a prior Order or Decision, does not permit
2 retroactive changes to rates previously found to be reasonable. Qwest claims that it is charging
3 customers the precise transport rates authorized by the *Phase II Order*, and there is no evidence that
4 those rates have not been properly assessed pursuant to Commission authorization.

5 Staff, MTI, and Time Warner argue that the transport rates determined in this proceeding
6 should be made effective as of the date of the *Phase II Order* (i.e., June 12, 2002). MTI claims that
7 the combined transport rate was not intended by the *Phase II Order*, but was the result of a
8 misunderstanding by the parties and the Commission as to how certain of Qwest's customers obtain
9 unbundled transport. MTI witness Hazel testified that MTI did not understand how Qwest had
10 structured the new transport rates until the company began to receive bills, retroactive to June 12,
11 2002, with the significantly increased transport rates (MTI Ex. 1, at 5). MTI contends that failing to
12 correct the transport rates back to the effective date of the *Phase II Order* would allow Qwest to
13 enjoy an unwarranted and unlawful economic windfall, based in part on Qwest receiving
14 compensation for provision of entrance facilities that are not used or needed by certain customers.
15 MTI also asserts that adoption of Qwest's position would reward Qwest for failing to implement the
16 new wholesale rates for a six-month period after the *Phase II Order* was adopted.

17 Staff witness Dunkel testified that the cost studies and rates inaccurately assumed that one
18 entrance facility should be included with each transport rate (Ex. S-1, at 4). Although this incorrect
19 assumption impacted only certain carriers such as MTI and Time Warner, Staff contends that it
20 would be discriminatory to require MTI and other such carriers to pay a higher rate for services they
21 do not use or need. Staff claims that establishment of a new separate tariffed rate for a service is not
22 retroactive ratemaking. Staff therefore supports making June 12, 2002 the effective date for the
23 transport rates adopted in this proceeding.

24 We agree with Staff and MTI that the transport rate should be effective as of June 12, 2002
25 when the *Phase II Order* was issued. The record reflects that the underlying assumption of the cost
26 studies was incorrect, insofar as the studies assumed that each transport rate required inclusion of an
27 entrance facility. Even Qwest apparently was not aware that certain customers obtained service in
28 this manner. Qwest's witness admitted that the company was "surprised" at the impact on certain

1 customers from bundling transport and entrance facility rates (Tr. 85; 100-101). Qwest also
2 conceded that if the rate placed in effect by Qwest was based on assumptions that were not intended
3 by the Commission's Order, and the Commission believes it is necessary to correct that mistake, the
4 Commission should make the rate effective as of the date of the original *Phase II Order* (Tr. 82-84).

5 Based on this mistaken assumption by all parties, that transport and entrance facilities were
6 required by all carriers, the transport rate determined by Qwest following the *Phase II Order* should
7 be considered void *ab initio*, and the effective date must necessarily revert back to the date of the
8 Commission's *Phase II Order*. In addition, we agree with Staff and MTI that it would be
9 inappropriate to permit Qwest to earn a windfall on rates that resulted from a mistaken assumption by
10 all parties, including Qwest. We do not believe that our determination of this effective date
11 constitutes retroactive ratemaking as that term was discussed in the *Arizona Grocery* case and other
12 cases cited by Qwest. None of those cases involved a set of facts where the underlying assumption
13 that gave rise to the new rate was incorrect, by the admission of all parties. Because we are adopting
14 Staff's proposed Option 1, the transport and entrance facility rates in effect prior to the *Phase II*
15 *Order* shall remain in effect on an interim basis from June 12, 2002 until the Commission establishes
16 permanent transport rates in Phase III¹.

17 **C. Analog Switch Port Rate**

18 The *Phase IIA Order* determined a port rate of \$1.61 and an allocation of switch costs of 60
19 percent port and 40 percent usage (Decision No. 65451, at 16-17). Staff witness Dunkel explained
20 that switching equipment contains traffic sensitive equipment, as well as non-traffic sensitive
21 equipment known as the "port" (Ex. S-1, at 6). The port includes a "line card" which is connected to
22 the loop facilities. Thus, the port is considered non-traffic sensitive because the number of line cards
23 required depends on the number of loops rather than the level of traffic through the switch (Id.).

24 Inside the switch, the switching network (or "switching fabric") is the equipment that actually
25

26 ¹ Qwest makes the argument that, if the Commission adopts an effective date of June 12, 2002 for transport rates, it
27 should also order the revised switching rates (see discussion below) be made effective as of the same date (Qwest Ex. 1,
28 at 7). Although the April 8, 2003 Stipulation setting out the issues in this proceeding specifically identified the effective
date for the transport rates as an issue to be addressed, the Stipulation did not include a similar provision indicating that
the effective date of adjustments to the switching rates would be a topic for consideration (See, April 11, 2003 Procedural
Order; Tr. 138-139). Therefore, we disagree with Qwest's argument on this issue.

1 switches calls. Mr. Dunkel stated that this equipment is traffic sensitive because its function is
2 related to the level of calls placed through the switch (Id. at 7). According to Mr. Dunkel, the exact
3 distribution between traffic sensitive and non-traffic sensitive costs may vary by switch manufacturer
4 or other factors. However, for all local switches, there are costs assignable to port that are not traffic
5 sensitive and costs allocable to usage due to their traffic sensitive nature (Id.).

6 Mr. Dunkel testified that the disputed issue in this proceeding arises primarily from an
7 inconsistency in the *Phase IIA Order* which accepted Staff's \$1.61 port rate recommendation while,
8 at the same time, adopting an allocation of 60 percent of costs to the port and 40 percent to usage (Ex.
9 S-1, at 6). Mr. Dunkel stated that the 60/40 port and usage allocation does not produce a \$1.61 port
10 rate, and thus Qwest could not recover 100 percent of its switch costs with a \$1.61 port rate (Id.). Mr.
11 Dunkel explained that the \$1.61 rate recommended by Staff in the Phase IIA hearing was based on a
12 compromise between the port rate advocated by Qwest and the \$1.10 rate supported by AT&T based
13 on the HAI model's allocation of 30 percent to port and 70 percent to usage. The \$1.61 rate was the
14 analog port rate in effect prior to the Commission's *Phase IIA Order*.

15 Staff suggests that, if the Commission wishes to retain the \$1.61 port charge adopted in the
16 *Phase IIA Order*, it would be necessary to change the allocation of costs between port and usage to
17 allow Qwest to fully recover its switching costs. In the alternative, Staff recommends that the
18 Commission should adopt a port rate of \$2.44 based on an allocation of 60 percent to port and 40
19 percent to usage (Id.)².

20 Qwest agrees with Staff that the \$1.61 analog switch port rate is inconsistent with the
21 Commission's adoption of the 60/40 allocation adopted in the *Phase IIA Order*. Qwest witness
22 Million testified that the HAI model adopted by the Commission for switching and other UNEs
23 produces a total switching cost of \$144,269,311 using the inputs ordered in the *Phase IIA Order*.
24 However, the \$1.61 port rate, combined with the per minute use rate of \$0.00097, allows recovery of
25 only \$115,415,449 (Qwest Ex. 1, at 7, 11). Qwest claims that this shortfall necessitates an

26 ² AT&T/WorldCom witness Douglas Denney testified that \$0.12 per line of network operation expenses was transferred
27 from loops to switching in the Phase IIA compliance runs and, therefore, the cost of loops should be reduced by a
28 corresponding amount (i.e., from \$12.11 to \$11.99) (AT&T/WorldCom Ex. 2, at 3). On rebuttal, Mr. Dunkel stated that
in lieu of reducing the loop rate by \$0.12, Staff recommends that the \$0.12 per line network operations expense be taken
out of the switch rates to produce a port rate of \$2.36 and a per minute usage rate of \$0.00094 (Ex. S-2, at 6).

1 adjustment of port and usage rates to \$2.44 and \$0.00097, respectively, in order to ensure full
2 recovery of the company's switch costs.

3 Qwest opposes Staff's recommendation to reduce the port and usage rates to account for the
4 \$0.12 related to network operations expenses. Qwest argues that, because of the inter-relationship
5 between UNE rates, there is often an impact on unrelated UNE rates when one or more UNE rates are
6 adjusted. Qwest claims that adoption of Staff's proposal would preclude finality in setting rates
7 because with every adjustment other UNE rates could be affected.

8 Prior to the hearing in this proceeding, Qwest, AT&T, and WorldCom stipulated that a
9 reduction in transport rates below the level produced by the HAI model in Phase II would cause the
10 HAI model to increase the amount of expenses assigned to the unbundled loop and switching
11 elements (Qwest Ex. 4). As a result of this shift in costs, Qwest contends if the Commission adopts
12 Staff's proposed \$0.12 reallocation, the parties should likewise be required to recognize in their
13 switching compliance runs the increase in the HAI model's allocation of expenses to switching that
14 would result from the decrease in transport rates (under Staff's Option 1).

15 In a departure from the position taken in the earlier phase of this docket, AT&T and
16 WorldCom argue that the Commission should assign no switch costs to usage. As described in the
17 *Phase IIA Order*, the HAI model advocated by the CLECs assigned 70 percent of costs to the usage
18 element and 30 percent to the port element (Decision No. 65451, at 17). In the *Phase IIA Order*, the
19 Commission rejected the CLECs' position and adopted the allocation described above assigning 60
20 percent to the port and 40 percent to usage. The Commission's Decision was based on the fact that
21 the CLECs had argued in other states that the 60/40 port and usage split was more appropriate (Id. at
22 17-18). Indeed, the CLECs agreed in the Phase IIA hearing that 60 percent of costs assigned to port
23 and 40 percent to usage was appropriate in this docket (Id. at 18).

24 Now, however, the CLECs suggest that *no* costs should be assigned to usage based on their
25 claim that modern switching equipment has virtually no usage constraints and because Qwest incurs
26 switching costs entirely on a flat-rated basis. The CLECs contend that Qwest and Staff are simply
27 adhering to an outdated view of technology when switches were constrained by usage limitations and
28 cost allocation was confused with cost causation. The CLECs assert that the question to be

1 considered is not the extent of usage of a switch by any particular customer, but how to recover the
2 costs that Qwest incurs to provide switching.

3 According to AT&T/WorldCom witness Richard Chandler, currently available forward-
4 looking switches have virtually no capacity constraints other than the number of lines served by the
5 switch and, as a result, there is no basis for imposition of a usage charge (Tr. 158-163). Mr. Chandler
6 indicated that he struggled to find a supportable allocation of costs between switch port and usage, an
7 exercise AT&T described as "trying to find a black cat in a dark room when there was no cat"
8 (AT&T Brief, at 12). The CLECs contend that, because Qwest does not pay its vendors for switches
9 on a per-minute of use basis, Qwest should charge CLECs on a flat-rated basis to lease that switching
10 capacity. According to CLEC witnesses Joseph Gillan, there are valid policy reasons for adopting the
11 CLECs' proposal. Mr. Gillan testified that CLECs considering entering the Arizona market will be
12 reluctant to serve higher volume residential customers if per-minute of use charges are imposed on
13 switching costs (Tr. 166).

14 With respect to the change of position from the prior phase of this docket, the CLECs claim
15 AT&T and WorldCom, as well as other carriers, have been slow to question the "myth" that costs of
16 local switching are usage sensitive (AT&T/WorldCom Ex. 3, at 26). However, the CLECs assert that
17 the historical industry practice of usage-based pricing of local switching is no longer valid and should
18 now be rejected. The CLECs cite to regulatory commission decisions in Minnesota, Illinois,
19 Wisconsin, and Indiana, where flat-rate switching structures have been adopted. The CLECs also
20 note that a Qwest witness testified before the Colorado commission that switching costs can
21 reasonably be recovered through fixed monthly charges (Id. at 24-26)³.

22 We agree with Qwest and Staff that, despite technology advances, switches are still designed
23 and engineered based on switch usage (Qwest Ex. 3, at 6). As Qwest witness Philip Linse explained,
24 end user usage remains a relevant factor because "the amount of central processor capacity needed is
25 a direct function of switch usage" (Id. at 7). Mr. Linse also testified that several recent switch
26 upgrades in Arizona were necessitated by increased usage in the areas where the upgrades occurred

27 ³ On cross-examination, Mr. Chandler admitted that his quotation of the Qwest witness' Colorado testimony omitted the
28 witness' footnote which stated "the cost may be traffic sensitive because additional traffic may require the use of more
trunks or lines respectively" (Tr. 205-206).

1 (Tr. 110-112, 152).

2 Qwest points out that most state regulatory commissions have rejected arguments similar to
3 those propounded by the CLECs in this proceeding. Qwest cites to decisions in Missouri, New York,
4 New Jersey, and Ohio where state commissions have adopted switching costs that include a usage
5 element. The FCC has also recognized that adoption of a per-minute of use component for switching
6 costs is a reasonable approach⁴.

7 Qwest's position is supported by Staff witness Dunkel, who testified that a portion of the
8 switch investment, including the switch fabric, is for the purpose of switching usage. Mr. Dunkel
9 stated that Qwest's investment in the switch depends in part on the level of usage the switch is
10 designed to handle and, therefore, usage-related costs should be recovered through usage rates. Mr.
11 Dunkel discounts the CLECs' claim that Qwest's investment at the time of installation should be
12 determinative of whether usage-related investment should be zero. According to Mr. Dunkel, the
13 CLECs' position fails to recognize the cost causation associated with increased usage on a switch
14 (Ex. S-2, at 2-4).

15 We are concerned that the CLECs' position in this docket has been an evolutionary process.
16 As described above, the CLECs' original position in this case, as contained in the HAI model,
17 recommended that the Commission adopt an allocation of switching costs based on 70 percent usage
18 and 30 percent to the port. On cross-examination at the earlier hearing, the CLECs conceded that
19 they had advocated in other states allocating 40 percent to usage and 60 percent to port. The CLEC
20 witness agreed at that hearing that the 40/60 usage and port allocation was reasonable, and the
21 Commission adopted that recommendation (Decision No. 65451, at 17-18).

22 We are not persuaded that adoption of the CLECs' recommendation *du jour* is appropriate in
23 this latest proceeding. As indicated above, in prior sworn testimony before this Commission, Mr.
24 Chandler supported initially a 70/30 split and, only on cross-examination, admitted that 40/60 was
25 also a reasonable allocation because his clients had advocated that allocation in other states. During
26

27 ⁴ Memorandum Opinion and Order, *Application by Verizon New England, Inc., Verizon Delaware, Inc. (dba Verizon*
28 *Long Distance), NYNEX Long Distance Co. (dba Verizon Enterprise Solutions), Verizon Global Networks, Inc., and*
Verizon Select Services, Inc., for Authorization to Provide In-Region, InterLATA Services in New Hampshire and
Delaware, WC Docket No. 02-157, FCC 02-262, 17 FCC Rcd 61882 (Re. September 25, 2002).

1 that prior testimony, the CLEC witness did not express any reservations about supporting his clients'
2 position, and the fact that he subsequently undertook a further analysis of supportable switch costs is
3 not a sufficient reason for changing the Commission's previous determination. Accordingly, we will
4 retain the 60 percent switch port and 40 percent usage allocation that was adopted in the *Phase IIA*
5 *Order*.

6 With respect to the "\$0.12 dispute" between Qwest and Staff, we agree with Qwest that it is
7 inappropriate to adjust the switching rate in this proceeding. There is an inter-relationship between
8 various UNE rates which will often affect a number of rates if one or more of those rates is changed.
9 As Qwest points out, the Phase III proceeding will address certain elements and services, including
10 transport. As stipulated by Qwest and AT&T, the establishment of new transport rates will affect
11 switching and loop costs. However, no party is suggesting that switching and loop rates should also
12 be adjusted in Phase III, because to do so would be administratively burdensome not only to the
13 Commission, but to the parties as well. Moreover, constant adjustments to all elements would
14 undermine the finality in rates that both Qwest and the CLECs require to make business plans in a
15 UNE environment. We will, therefore, adopt the \$2.44 port and \$0.00097 per-minute usage rate
16 advocated by Qwest.

17 Having considered the entire record herein and being fully advised in the premises, the
18 Commission finds, concludes, and orders that:

19 **FINDINGS OF FACT**

20 1. Qwest is certificated to provide local exchange and intraLATA telecommunications
21 services to the public in Arizona, pursuant to Article XV of the Arizona Constitution.

22 2. In the *First Cost Docket Order* (Decision No. 60635), the Commission set prices for
23 interconnection and UNEs, as well as wholesale discounts.

24 3. In the *Phase II Order* of this docket (Decision No. 64922), the Commission
25 established permanent geographically deaveraged rates and prices for a number of recurring charges
26 for UNEs, interconnection, collocation, and other ancillary services. Consideration of "switching"
27 issues was deferred to Phase IIA.

28 4. In the *Phase IIA Order* (Decision No. 65451), the Commission decided switching and

1 other issues deferred from Phase II.

2 5. Pursuant to a compliance filing made January 10, 2003, in the *Phase IIA Order*, Qwest
3 indicated that the parties had come to agreement on all but one issue contained in that Decision. The
4 remaining issue in dispute from the *Phase IIA Order* is the recurring charge for analog line side port.

5 6. On January 17, 2003, Mountain Telecommunications, Inc. filed a Motion for
6 Injunction seeking to prevent Qwest from imposing the transport rate charges that were authorized in
7 the *Phase II Order*. MTI alleged that the transport rates implemented by Qwest were unintended by
8 the Commission and are inconsistent with the Commission's stated goal of encouraging local
9 competition.

10 7. A Procedural Conference was conducted on March 25, 2003 to discuss the transport
11 rate and analog switch port rate issues. Until the transport rate issue is resolved by the Commission,
12 Qwest agreed that it would accept from MTI, and similarly situated companies, payments based on
13 transport rates existing prior to issuance of the *Phase II Order*.

14 8. Pursuant to a Stipulation filed April 8, 2003, the signatory parties requested an
15 expedited hearing on the issues of the proper transport rate and entrance facility charges; the effective
16 date of such charges; and the analog switch port rate.

17 9. By Procedural Order issued April 11, 2003, a hearing on the stipulated issues was set
18 for May 28, 2003.

19 10. The hearing was held, as scheduled, on May 28, 2003. Closing briefs were filed on
20 July 1, 2003.

21 11. Based on the record presented in this limited proceeding, Staff's Option 1 is a
22 reasonable interim solution to the transport rate issue. Option 1 requires Qwest to assess separate
23 transport and entrance facility charges at the same rates that were in effect prior to issuance of the
24 *Phase II Order*. A permanent transport rate will be established in Phase III of this docket.

25 12. The effective date of the transport rate shall be June 12, 2002, the date of the *Phase II*
26 *Order*, due to the fact that the transport rates implemented by Qwest were based on a mistaken
27 assumption by all parties, including Qwest, regarding whether all CLEC customers require both
28 transport and entrance facilities.

13. An analog switch port rate of \$2.44 and usage rate of \$0.00097 per minute are reasonable, based on an allocation of 60 percent of switch costs to port and 40 percent to usage.

CONCLUSIONS OF LAW

1. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. Qwest is an incumbent LEC within the meaning of 47 U.S.C. §252.

3. The Commission has jurisdiction over the parties and of the subject matter in this docket.

4. The Commission's resolution of the issues pending herein is just and reasonable, consistent with the 1996 Telecommunications Act, FCC Orders and Rules, the Commission's Rules, and all applicable law, and is in the public interest.

5. The burden of proof to establish a proper cost basis under the 1996 Telecommunications Act is on Qwest.

6. The prices for unbundled network elements are “based on the cost (determined without reference to a rate of return or other rate-based proceeding) of providing the interconnection or network element [and are] nondiscriminatory.”

ORDER

IT IS THEREFORE ORDERED that the Commission hereby adopts and incorporates as its Order the resolution of the issues contained in the above Discussion.

IT IS FURTHER ORDERED that the parties shall file within 30 days of the date of this Decision, a joint schedule setting forth all rates and charges approved herein.

IT IS FURTHER ORDERED that Qwest shall complete implementation, with true-ups, within 60 days of the compliance filing, or sooner, if possible. If Qwest is unable to comply with this implementation timeframe, it must file a request for extension of time prior to the deadline, indicating the reasons why it is unable to comply and with a proposal of an alternate date for implementation.

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1 IT IS FURTHER ORDERED that the rates and charges approved herein shall be effective
2 immediately.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
6
7 CHAIRMAN

COMMISSIONER

COMMISSIONER

8
9 COMMISSIONER

COMMISSIONER

10
11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
12 Secretary of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this ____ day of _____, 2003.

16 BRIAN C. McNEIL
EXECUTIVE SECRETARY

17 DISSENT _____

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19 DISSENT _____

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